



**AMERICANS FOR
PROSPERITY**

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VIA FACSIMILE ((202) 219-3496) AND U.S. MAIL

January 29, 2013

Mr. Chris Jones
Senior Campaign Finance Analyst
Reports Analysis Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: October Quarterly Report (07/01/2012 – 9/30/2012)

Dear Mr. Jones:

In the course of reviewing its reports posted on the Federal Election Commission's reporting website, Americans for Prosperity ("AFP") noticed a Request for Additional Information ("RFAI") concerning the above-referenced FEC Form 5 report for AFP's independent expenditures ("IEs"). AFP has never received this particular RFAI.¹ Nevertheless, AFP provides the response below.

Regarding the IE entitled "New Ideas," for which AFP reported a date of August 20, 2012 on its Form 5 filed on August 24, 2012 (FEC Report # 807320): This IE in fact was first disseminated on August 23, 2012. As your letter suggests, the August 20 date reported on the Form 5 reflects the date of payment for the communication. Accordingly, the 24-hour report (FEC Report # 807320) was timely filed for this IE, pursuant to 11 CFR 109.10(d).

Regarding the IE entitled "Still Believe," for which AFP reported a date of August 13, 2012 on its Form 5 filed on August 16, 2012 (FEC Report # 804882): This IE in fact was first disseminated on August 15, 2012. Again, the August 13 date reported on the Form 5 reflects the date of payment for the communication. Accordingly, the 48-hour report (FEC Report # 804882) also was timely filed for this IE, pursuant to 11 CFR 109.10(c).

AFP notes that 11 CFR 109.11(e)(1)(iii) requires filers to report the "amount, date, and purpose of each expenditure" on Form 5. Similarly, the Form 5 instructions simply request "the date the independent expenditure was made and the amount." At the same time, 11 CFR 109.11(d) talks about "the date on which a communication is publicly distributed or otherwise publicly disseminated" as the trigger for filing the 24- and 48-hour reports. It is generally

¹ AFP did receive an RFAI concerning its FEC Form 9 filed on October 13, 2012, and responded by letter dated January 14, 2013. Unlike the RFAI which AFP did receive, and which was addressed to the custodian of records listed on AFP's Form 9, the RFAI that is the subject of this response was addressed to no one in particular.


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accepted that where a regulatory agency uses different terms, it is presumed that it means different things. *Keene Corp. v. U.S.*, 508 U.S. 200, 208 (1993). Since neither the Form 5 instructions nor 11 CFR 109.11(e)(1)(iii) require the date of "distribut[ion]" or date of "disseminat[ion]" to be reported, AFP understood the "Date of Independent Expenditure" field on Form 5 to request the date of payment for the IEs. As your letter implicitly acknowledges, Form 5 is, in fact, ambiguous regarding this point.

On August 27, 2012, AFP sought clarification from Ms. Nataliya Ioffe of the Reports Analysis Division as to whether the date of payment or date of dissemination should be reported on Form 5. Ms. Ioffe acknowledged the form, instructions, and regulations are ambiguous regarding this question. Nonetheless, Ms. Ioffe advised AFP to report the date of dissemination on Form 5. From that point on, AFP did as instructed.²

We trust that we have provided a satisfactory explanation in response to your RFAI. Please do not hesitate to contact us should you have any additional questions.

Sincerely,


John Flynn

Vice President and General Counsel
Americans for Prosperity

² For the transactions reported on the 24- and 48-hour reports filed prior to August 27, AFP did not change the dates when it reported these transactions on its October Quarterly Report so as not to create any confusion between the original expedited reports and the quarterly report.

Federal Election Commission
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